IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 08.04.2005

CORAM:

THE HONOURABLE MR.MARKANDEY KATJU, THE CHIEF JUSTICE

AND

THE HONOURABLE MR. JUSTICE F.M.IBRAHIM KALIFULLA

W.A. No. 1420 of 2003

M/s.United Telecoms Ltd.,
rep. by its Director C.Basava Purniah,
Bangalore-560 048.

Appellant/Petitioner.

Vs.

1. Bharat Sanchar Nigam Ltd.,
   Chennai Telephones,
   7, Kushkumar Road,
   Nungambakkam, Chennai-34.

2. The Divisional Engineer,
   (Transmission Planning I),
   BSNL, Chennai Telephones,
   7, Kushkumar Road, II Floor,
   Nungambakkam, Chennai-34.

Respondents/Respondents.

Prayer: Appeal under clause 15 of the Letters Patent against the order of this Court made in W.P.No.24091 of 2002 dated 13.2.2003.

For Appellant :: Mr.K.Subramanian, senior counsel for Mr.M.Mohammed Shafi.

For Respondents :: Mr.V.T.Gopalan, Addl. Solicitor General assisted by Mr.S.Udayakumar, SCGSC.

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JUDGMENT

(Judgment of the Court was delivered by
The Hon'ble Chief Justice.)

This writ appeal has been filed against the impugned judgment of the learned single Judge dated 13.2.2003. We have heard the learned senior counsel for the parties and perused the records.

2. The claim of the writ petitioner was for a refund of the bid security given as a bank guarantee, which has been encashed by the second respondent.

3. Mr.V.T.Gopalan, learned Additional Solicitor General appearing for Bharat Sanchar Nigam Limited has invited our attention to the arbitration clause signed by the parties, which states:-

> "In the event of any question, dispute or difference arising under this agreement or in connection therewith except as to matter the decision of which is specifically provided under this agreement, the same shall be referred to sole arbitration of the Chief General Manager, Chennai Telephones, Chennai-10 or in case his designation is changed or his office is abolished then in such case to the sole arbitration of the officer for the time being entrusted whether in addition to the functions of the Chief General Manager, Chennai Telephones or by whatever designation such officers may be called (hereinafter referred to as the said officer) and if the Chief General Manager or the said officer is unable or unwilling to act as such the sole arbitration or some other person appointed by the Chief General Manager or the said officer."

4. In our opinion the appellant can invoke this arbitration clause and if he does so, the arbitrator will decide the controversy preferably within three months of the presentation of the application before the arbitrator. In view of this alternative remedy, the writ appeal is disposed off without going into the merits of the case. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ns.

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To

1. Bharat Sanchar Nigam Ltd.,
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   Nungambakkam, Chennai-34.

2. The Divisional Engineer,
   (Transmission Planning I),
   BSNL, Chennai Telephones,
   7, Kushkumar Road, II Floor,
   Nungambakkam, Chennai-34.

+ 1 CC to Mr.M.Mohammed Shafi, Advocate SR NO 16851

+ 1 CC to Mr.S.Udayakumar, ACGSC, High Court, Madras SR NO 17004

W.A. No. 1420 of 2003

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gp/16.4.

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